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July 1, 2005

25118.74631

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Marlene H. Dortch
Secretary
Federal Communications Commission
445 Twelfth Street, SW
Washington, DC 20554

Re: **MB Docket No. 03-15 -- Digital Television Station KPTM-DT, Omaha, Nebraska (Facility I.D. No. 51491); Request for Temporary Relief from July 1, 2005 "Use-It-or-Lose-It" Deadline for Completion of Construction of Maximized Transmitting Facilities Authorized in Outstanding Construction Permit in File No. BPCDT-19991101AGZ**

Dear Madame Secretary:

We represent KPTM (TV) License, LLC ("License"). License holds a license from the Commission that authorizes License to operate primary analog UHF commercial television broadcasting station KPTM (TV) on NTSC Channel 42 in Omaha, Nebraska (File No. BRCT-19980130KV, granted on June 8, 1998). License also holds an outstanding construction permit from the Commission, as extended (File No. BPCDT-19991101AGZ, granted on January 24, 2001, as extended by File Nos. BEPCDT-20020301AFU, granted on June 7, 2002, and BEPCDT-20021008AAN, granted on November 26, 2002), that authorizes License to build and operate primary digital UHF commercial television broadcasting station KPTM-DT on DTV Channel 43 in Omaha. Stations KPTM (TV) and KPTM-DT bear the Commission's Facility Identification Number 51491.

Station KPTM-DT is affiliated with the Fox Television Network and Omaha is among the Top 100 television markets. Hence, by today's date, Station KPTM-DT is required, pursuant to the *Report and Order in MB Docket No. 03-15, Second Periodic Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television*, 19 FCC Rcd. 18,279 (2004), to have completed construction of, and to be operating with, the so-called "maximized" transmitting facilities for the station that are specified in the outstanding construction permit in File No. BPCDT-19991101AGZ, under penalty of forfeiting future protection from interference to a portion of the station's signal coverage area that would be served by such facilities (i.e., "use-it-or-lose-it").

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This letter is being filed pursuant to the Commission's *Public Notice*, DA 05-1636, released June 15, 2005, entitled, "*DTV Channel Election Issues – Compliance with the July 1, 2005 Replication/Maximization Interference Protection Deadline; Stations Seeking Extension of the Deadline*" (the "*June 15 Public Notice*"). By this letter, License seeks temporary relief from today's deadline for the completion of the construction of, and for the commencement of operations with, Station KPTM-DT's maximized transmitting facilities that are specified in the outstanding construction permit in File No. BPCDT-19991101AGZ for a period of sixty (60) days following the Commission's grant of the later-granted of two pending applications (File Nos. BMPCDT-20050512AAY and BPCT-20050512ADD, respectively) for a modified construction permit for Station KPTM-DT and for a construction permit for Station KPTM (TV).

On May 12, 2005, License filed with the Commission two applications: an application for a modified construction permit for Station KPTM-DT (File No. BMPCDT-20050512AAY) and an application for a construction permit to modify the transmitting facilities of Station KPTM (TV) (File No. BPCT-20050512ADD). Those applications remain pending as of this date.

The Commission's grants of the two applications described in the immediately-preceding paragraph will be necessary to the implementation of maximized transmitting facilities for Station KPTM-DT, inasmuch as they propose to install a single combined antenna for both Stations KPTM-DT and KPTM (TV), to be top-mounted on the existing antenna support tower upon which those stations' separate antennas are currently mounted. The combined antenna will replace Station KPTM (TV)'s antenna at the top of the tower. Hence, License finds itself in the situation described in the second paragraph of the *June 15 Public Notice* under the headline, "*Compliance with the Replication/Maximization Interference Protection Deadline*" on Page 2:

A station subject to the July 1, 2005 deadline that intends to operate at facilities different from those authorized in an outstanding license or construction permit must file by July 1, 2005 an application for modification of the license or permit that is consistent with the outstanding DTV freeze (DA 04-2446, rel. August 3, 2004). These stations must subsequently file a license application for these facilities.

In addition, in response to the first paragraph on Page 3 of the *June 15 Public Notice*, License offers the following information:

(1) *How close to full replication/maximization the station will be as of the deadline:* As of this date, operating pursuant to a Special Temporary Authorization (File No. BEDSTA-20041104BDT, granted on December 8, 2004) that permits License and its predecessor to have initially built, and to

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initially operate, the transmitting facilities of Station KPTM-DT at values below the specifications in the outstanding construction permit in File No. BPCDT-19991101AGZ, the station is only able to cover approximately ten percent (10%) of the area that would be covered by the maximized transmitting facilities authorized in that outstanding construction permit. However, License timely ordered the combined antenna in December of last year and is awaiting both the grants of the applications for construction authorizations for Stations KPTM-DT and KPTM (TV) referenced above, and for the antenna installation company (Dielectric) to provide a crew in order to complete the construction of the facilities contemplated in the pending applications in File Nos. BMPCDT-20050512AAY and BPCT-20050512ADD. Dielectric has explained that due to an emergency affecting another client of Dielectric, Dielectric was compelled to take personnel off of the Station KPTM-DT project and re-deploy them elsewhere, leading to delays in Dielectric's completion of its portion of the Station KPTM-DT project. Upon the Commission's grant of the later-granted of the applications for Stations KPTM-DT and KPTM (TV) in File Nos. BMPCDT-20050512AAY and BPCT-20050512ADD, License believes that it can complete the construction of the maximized facilities for Station KPTM-DT contemplated in the former application within sixty (60) days thereafter.

(2) *The reason the station is unable to fully comply:* The reasons are set forth elsewhere in this letter.

(3) *The cost to the station and the impact on viewers if the station were required to fully comply:* Cost is not a factor in this situation. As indicated, License is prepared fully to comply as soon as its shall have received the necessary authorizations from the Commission and the Dielectric installation crew can complete the to-be-authorized construction. The impact upon viewers will be a significant increase in Station KPTM-DT's transmitting facilities and coverage.

(4) *Whether the station will be able to modify its operation to fully comply after analog operation terminates (e.g., relocate their DTV antenna to the top of the tower):* Station KPTM-DT will

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fully comply, by installing the combined antenna at the top of the tower, as soon as the construction authorizations for its own facilities, and those of its "paired" analog Station KPTM (TV), shall have been issued by the Commission and the Dielectric installation crew shall have completed its portion of the project.

(5) *Any other relevant factors:* None.

For the foregoing reasons, and consistent with the *June 15 Public Notice*, License respectfully submits that the public interest would be served by granting License temporary relief from today's "use-it-or-lose-it" deadline for the completion of the construction of, and for the commencement of operations with, the maximized transmitting facilities specified in the outstanding construction permit for Station KPTM-DT in File No. BPCDT-19991101AGZ, for a period of sixty (60) days from the date of the Commission's grant of the later-granted applications in File Nos. BMPCDT-20050512AAY and BPCT-20050512ADD.

In the event that the Commission or its staff should have any questions pertaining to this request, kindly refer them to License's undersigned counsel.

Very truly yours,

A handwritten signature in black ink, appearing to read "John Griffith Johnson, Jr.", with a stylized flourish at the end.

John Griffith Johnson, Jr.
of PAUL, HASTINGS, JANOFSKY & WALKER LLP

JGJ:dfr

cc: Shaun Maher (via electronic mail to shaun.maher@fcc.gov)